

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 717 OF 2016

FLAVIA FERNANDES E PEREIRA AND
ANR.

... Petitioners

Versus

SHRI. SIMON FERNANDES AND 2 ORS.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioners.

Mr. M. B. Da Costa, Senior Advocate with Ms. Karishma Custa

Betquecar, Advocate for the respondent no.1.

Respondent no.4 present in person.

Coram:- F. M. REIS, J.

Date:- 28th November, 2016

ORAL ORDER :

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioners and Mr. M. B. Da Costa, learned Senior Counsel appearing for the respondent no.1.

2. The challenge in the above petition is to an order dated 07.02.2014 passed by the learned Trial Judge which came to be confirmed by the learned Lower Appellate Court by judgment dated 09.10.2015. In Inventory Proceedings initiated upon the death of the parents of the petitioners and the respondents, the Cabeça de Casal who is the respondent no.1 in his statement on oath produced a deed of relinquishment dated 25.11.1976 executed before the then Civil Judge Senior Division, Panaji, whereby the petitioners had relinquished the right to the

inheritance of the father of the petitioner no.1.

3. Mr. Bhobe, learned counsel appearing for the petitioners points out that the petitioners have seriously disputed the authenticity of the said deed of relinquishment as according to him the power of attorney in favour of the respondent no.4 has not been produced despite of the notice issued to the respondent no.4. The learned counsel further pointed out that even upon inquiries before the concerned Court, it has transpired that no power of attorney was found on record of such Court. It is further submitted that the petitioners made inquiries with the different Notaries with no positive result to show that any power of attorney was executed. The learned counsel further pointed out that though the petitioners accept that the power of attorney was executed in 1967 but however, according to them there was no power to relinquish the inheritance of the deceased father of the petitioner no.1. The learned counsel further pointed out that in such circumstances, the Courts below have erroneously refused the objections raised by the petitioners and in any event, according to him the learned Inventory Court ought to have conducted an inquiry before disposing of the objections raised by the petitioners in connection with the subject deed of relinquishment.

4. On the other hand, Mr. M. B. Da Costa, learned Senior

Counsel appearing for the respondent no.1 submits that the deed of relinquishment was executed before the then learned Civil Judge Senior Division, Panaji and as such there is a presumption that all the formalities as well as the requirements of law have been duly complied with. It is further pointed out that there is a specific statement in the document to the effect that the respondent no.4 on the basis of the power of attorney had executed such deed of relinquishment. The learned Senior Counsel further pointed out that the petitioners have failed to rebut the presumption that such document was executed and as such the question of holding an inquiry would be an empty formality. The learned Senior Counsel further pointed out that the alleged document produced by the petitioners cannot in any way rebut the presumption of legality of such document. The learned Senior Counsel as such points out that there is no case made out by the petitioners for any interference in the impugned order. The respondent no.4 who is present in person when questioned has pointed out that in fact the power of attorney was executed by the petitioners before the Notary at Panaji and according to him was Mr. Colaso. The respondent no.4 submits that based on the power of attorney, the deed of relinquishment was executed and according to him the power of attorney was handed over to the Court. It is further pointed out that during that time there was no scope of taking any photo copy of such power of attorney and as such according to him the respondent no.4

does not hold a copy of such power of attorney.

5. I have considered the submissions of the learned counsel and I have also gone through the records. It is not disputed that the subject document was signed and executed before the then Civil Judge Senior Division, Panaji. Such documents are executed in the Book of Relinquishment maintained by the Civil Court. Hence, the certified copy of the records was obtained from the Book of Relinquishment maintained in such Court. The document as such itself raises a presumption that all legal formalities have been duly complied with. In fact, the document itself suggest that the deed of relinquishment was executed before the concerned Judge based on the material produced before the learned Court. No doubt, the petitioners can rebut such presumption by producing clinching and cogent material on record to the contrary. The document sought to be relied upon by the petitioners cannot by itself rebut the legality of the deed of relinquishment.

6. Mr. Bhobe, learned counsel appearing for the petitioners however points out that the learned Judge be directed to hold an inquiry with regard to the legality of the subject document. The relinquishment as pointed out is only to the inheritance of the deceased father of the petitioner no.1. The Inventory Proceedings filed are of both the parents of the petitioner no.1.

There is no relinquishment admittedly produced in respect of the inheritance of the deceased mother who is stated to have expired in the year 1998. Mr. Bhobe, learned counsel appearing for the petitioners further submits that the whole conduct of the respondent no.4 is fraudulent as according to him the respondent no.4 has misused the power of attorney executed by the petitioners. This contention of the petitioners would require a larger investigation on the basis of the evidence and material to be produced by the petitioners. This exercise cannot be carried out in the Inventory Proceedings. The petitioners, if so advised would have to take appropriate remedy in law to get their allegations established in connection with the subject deed of relinquishment. As such, the inquiry in the Inventory Court which are of basically of a summary in nature cannot be extended to examine a larger investigation on the alleged fraud claimed by the petitioners. As such, I find that there is no jurisdictional error committed by the learned Judge which would call for interference in the impugned order. Reserving the right of the petitioners if so advised to resort to a remedy to challenge the said Deed of Relinquishment in accordance with law, the petition stands disposed off.

F. M. REIS, J.

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